

CALIFORNIA COASTAL COMMISSION

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May 22, 2018

Th14c**TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: KARL SCHWING, DEPUTY DIRECTOR, SD COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SD COAST DISTRICT
GABRIEL BUHR, COASTAL PROGRAM MANAGER, SD COAST DISTRICT
ERIC STEVENS, COASTAL PROGRAM ANALYST, SD COAST DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF ENCINITAS MAJOR
AMENDMENT LCP-6-ENC-17-0068-1 (Omnibus Clean-up) for Commission
Meeting of June 6-8, 2018**

SYNOPSIS

The subject LCP Implementation Program amendment was submitted on November 14, 2017 and filed as complete on December 14, 2017. A one-year time extension was granted on February 8, 2018. As such, the last date for Commission action on this item is February 12, 2019.

This report addresses the entire amendment submittal.

SUMMARY OF AMENDMENT REQUEST

This request involves a city-initiated Local Coastal Program (LCP) amendment to make various minor revisions to the text of Municipal Code Title 30 (Zoning), Title 24 (Subdivisions), Chapter 23.08 (Design Review), Chapter 23.24 (Grading, Erosion and Sediment Control), and to four of the City's Specific Plans, which are certified as part of its LCP Implementation Program (IP). No changes to land use or the certified LCP Land Use Plan are proposed herein.

The primary purpose of the City's amendment is to amend many unrelated sections of the Zoning Ordinance and various other sections of the IP that contain minor errors, need clarification, require updates to reflect current conditions, or other "clean-up" revisions. While the vast majority of the proposed revisions are "clean-up" amendments, the City also proposes the addition of various new zoning code matrix classifications related to auto sales, government offices, co-working spaces, and electric vehicle charging service stations. In addition, the City is proposing to modify noticing requirements for some local hearings and also to include reference to zoning ordinance Chapter 30.00, which is not

currently a part of the certified IP. The proposed amendment consists of text changes only; the revisions will apply citywide, as well as affect development citywide.

SUMMARY OF STAFF RECOMMENDATION

The Commission may only reject Implementation Program (IP) amendments where it can be shown that the amendment would be inconsistent with the certified Land Use Plan (LUP) or render the IP inadequate to carry out the LUP. Staff is recommending denial of the amendment as proposed, and then approval of the amendment with one suggested modification. As noted above, the bulk of the proposed revisions are sought to improve regulatory consistency, provide clarity in the zoning code, improve the usability of the code, and correct minor errors, along with some other minor amendments. However, as part of the LCPA, the City is proposing new Section 30.72.020.C, in its chapter on the initiation and authority to grant zoning amendments, which states:

C. A change in boundaries of any zone, a change of zoning on property from one zone to another, or a change in the zoning regulations that increases density or intensity of land use is subject to Chapter 30.00 Encinitas Right To Vote Amendment.

In the City of Encinitas, the entire zoning code is part of the IP, except for Chapter 30.00. Chapter 30.00 resulted from a Citizen's Initiative that passed in 2013 (Proposition A). Proposition A prescribed a maximum building height of 30 ft. and the method for measuring building height, a maximum of two stories for new development, modified noticing requirements, and a requirement for a citywide vote for any major amendments to the City's existing land use planning policy documents. At the time of the initiative's passage, although Commission staff advised the City that it would be best to reconcile the proposition's directives with the certified LCP, the City chose not to submit an LCPA to incorporate the provisions of the initiative into the certified LCP. Instead, the City and Commission staff agreed that any aspect of the new zoning chapter that was more protective of coastal resources could be applied consistently with the LCP, but that for any aspects that were less restrictive, the LCP would control.

The proposed reference to Chapter 30.00 in this LCPA submittal would result in the incorporation of the entirety of Chapter 30.00 into the certified LCP by reference. Incorporation of the entire chapter into the LCP would be problematic as there are numerous aspects of Chapter 30.00 that are inconsistent with the existing LCP. For example, the existing LCP has various provisions that allows buildings higher than 30 ft. and more than two stories in different areas of the City. When Commission staff raised the LCP conflicts with City staff, the City requested that the proposed cross-reference and sub-section be deleted. The City has not decided whether or not they will bring forward a separate LCP amendment in the future to incorporate Chapter 30.00 into the LCP. While incorporation of Chapter 30.00 into the LCP may ultimately be a positive development and result in reduced confusion for project applicants, the City has requested that the Commission delete proposed Section 30.72.020.C through a suggested modification.

Therefore, staff is recommending denial, as submitted and subsequent approval, with one suggested modification, of the proposed LCPA. Suggested Modification #1 would eliminate Section 30.72.020.C. Inclusion of this language ensures adequate protection of coastal resources and consistency within the certified LCP.

The appropriate resolutions and motions begin on Page 4. The suggested modification can be found on Page 6. The findings for denial, as submitted, of the LCPA begin on Page 6. The findings for approval, if modified, of the LCPA begin on Page 11.

ADDITIONAL INFORMATION

Further information on the Encinitas LCP amendment LCP-6-ENC-17-0068-1 may be obtained from Eric Stevens, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

On November 17, 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (both land use plan and implementing ordinances). The City accepted the suggested modifications and, on May 15, 1995, began issuing coastal development permits for those areas of the City within the Coastal Zone.

B. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified Land Use Plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires local governments to provide the public with maximum opportunities to participate in the development of the LCP amendment prior to its submittal to the Commission for review. The City has held Planning Commission and City Council meetings with regard to the subject amendment request, including a workshop and study session, four hearings, a 45-day public review and comment period to receive initial public comment, and a 6-week public review period on the proposed amendments. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties of record for Encinitas matters.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation is provided prior to the resolution.

- I. MOTION:** *I move that the Commission reject the Implementation Program Amendment # LCP-6-ENC-17-0068-1 for the City of Encinitas LCP as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of the Implementation Program Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment submitted for the City of Encinitas and adopts the findings set forth below on grounds that the Implementation Program Amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Program Amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment as submitted

II. MOTION II: *I move that the Commission certify the Implementation Program Amendment No. LCPA-6-ENC-17-0068-1 for the City of Encinitas if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment a suggested modification and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Program Amendment for the City of Encinitas if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment, with the suggested modification, conforms with and is adequate to carry out the certified Land Use Plan. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

PART III. SUGGESTED MODIFICATION

Staff recommends the following suggested revisions to the proposed Implementation Program be adopted. The struck-out section represents language which the Commission suggests be deleted from the language as originally submitted.

1. Chapter 30.72 – ZONING AMENDMENT, Section 30.72.020 Initiation/Authority to Grant Amendment, delete proposed Section 30.72.020.C as follows:

~~C. A change in boundaries of any zone, a change of zoning on property from one zone to another, or a change in the zoning regulations that increases density or intensity of land use is subject to Chapter 30.00 Encinitas Right To Vote Amendment.~~

PART IV. FINDINGS FOR REJECTION OF THE CITY OF ENCINITAS IMPLEMENTATION PROGRAM AMENDMENT, AS SUBMITTED

A. AMENDMENT DESCRIPTION

This request involves a city-initiated Local Coastal Program (LCP) amendment and zoning code amendment to make various minor revisions to the text of the City's Zoning Ordinance, other sections of the municipal code, and Specific Plans, which are certified as part of its LCP Implementation Program (IP). No changes to land use or the certified LCP Land Use Plan are proposed herein.

The primary purpose of the City's amendment is to amend many unrelated sections of the Zoning Ordinance and other sections of the IP that contain minor errors, need clarification, require updates to reflect current conditions, or other "clean-up" revisions. While the vast majority of the proposed revisions are "clean-up" amendments, the City also proposes the addition of various new zoning code matrix classifications related to auto sales, government offices, co-working spaces, and electric vehicle charging service stations. In addition, the City is proposing to modify noticing requirements for some local hearings and also to include reference to zoning ordinance Chapter 30.00, which is not currently a part of the certified IP. The proposed amendment consists of text changes only; the revisions will apply citywide, as well as affect development citywide. Given the bulk of the individual changes being proposed, the City compiled a list of proposed changes to the code sections and to the various Specific Plans in strikeout/underline format.

B. SPECIFIC FINDINGS FOR REJECTION

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

1) **Purpose and Intent of the Ordinance**. The primary purpose of this proposed amendment is to amend many unrelated sections of the certified Zoning Ordinance and other sections of the IP that contain minor errors, warrant clarification, need to be updated to reflect current conditions or mandates, and other minor changes as “clean-up” provisions.

2) **Major Provisions of the Ordinance**.

The major provisions of this proposed amendment request include, but are not limited to, the following:

a) **New Definitions (§ 30.04) and Uses (§ 30.09)**

- “Accessory Structure, Detached” added as a new stand-alone definition separate from the existing definition for “Dwelling, Detached” in order to better align with the City’s Accessory Dwelling Unit regulations.
- “Co-Working Space” and “Electric Vehicle Charging Service Station” and “Government Office” added as new definitions and as new use types in the Use Matrix.
- “Convenience Store/Mini-Market” added as a new definition in order to clarify the type of use.
- “Tobacco, Smoke, or Electronic/Vapor Substance Inhalation Shop” added as a new definition in order to clarify this type of use.
- “Auto Sales, Excess Inventory Parking” added as a new use type to the Use Matrix.

Four of the City’s Specific Plans (Cardiff-by-The-Sea, Downtown Encinitas, Encinitas Ranch, and North 101 Corridor) have also been amended to encompass all or some of the above described amendments in their respective zoning Use Matrices.

b) **Amended Definitions and IP Regulations**

- Section 30.01.070 has been amended to clarify that for projects that do not require a public hearing; the required public notice must indicate the deadline for comments and objections. In addition, the section has been amended to clarify that if the date of subsequent or continued hearings is announced during the noticed hearing, that no additional public notice is required.

- 30.72.020.C has been added to the zoning ordinance to require that boundary changes, a change of one zone to another or a zoning change that increases density or intensity of land use is subject to Chapter 30.00 of the zoning ordinance (not a part of the certified LCP).
- The definition of “Building Remodel” has been eliminated to reflect current practices related to the determination of City permit fees. The City no longer needs the definition as a threshold for fees.
- The definition of “Animal, Small” has been amended to explicitly include pygmy goats, pigs, goats, sheep, and miniature horses. The definition of “Small Animals” has been deleted as it no longer needed.
- The definition of “Child Day Care Facility” has been eliminated as the use is captured in the definition of “Day Care Center.”
- The definition of “Church” has been eliminated as the use is captured in the definition of “Religious Institution.” The definition of “Religious Institution” has also been amended to identify allowed incidental uses.
- The definition of “Gross Area” has been eliminated as the definition of “Gross Area” was previously incorporated into the definition of “Lot Area, Gross.”
- Regulations for conformance with use permits have been amended to further clarify final determination of substantial conformance (§ 30.74.070).

c) Reorganized IP Regulations

- Regulations related to “Stable, Commercial” and “Stable, Private” and “R-15: Residential 15” and “Variances” have been amended to consolidate and reorganize the references, but no changes to substance are proposed. (§ 30.04.010, § 30.08.10, § 30.78024).

3) Consistency with and Adequacy of the Ordinance to Implement the Certified LUP

As noted above, the standard of review for IP submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. The proposed amendment consists of many unrelated “clean-up” changes to the certified zoning ordinance and other sections of the IP. The vast majority of the proposed amendments do not change the intent of the sections being amended nor do they propose any change in land use. As a whole, the proposed amendments are drafted and intended to improve code consistency both internally within the municipal code and with the General Plan, LCP and State laws. The proposed revisions are also intended to improve

the usability of the code by clarifying both language and processes and improving the relevancy of the code by recognizing current terms and procedures.

Of the miscellaneous revisions, there are two that warrant additional discussion. The first revision that merits additional analysis is the proposed change to the City's public hearing notice requirements, which is intended to clarify existing City practice related to notice requirements for subsequent or continued hearings. Specifically, 30.01.070.F is proposed and states:

If the date of a subsequent hearing or a continued hearing is announced at the noticed time and place, no additional notice is required for the second or continued hearing, unless required by law. If no such announcement is made at the noticed time and place, the second or continued hearing shall be noticed in accordance with the above.

Section 30.01.070 details when and how public notice must be provided for projects under review by the City. For projects that require a public hearing, notices must include the date and time of the public hearing, the purpose of the hearing, and a description of the proposed project. Notices must be published in a local newspaper, mailed to nearby property owners, posted at City Hall, sent to any person who has filed a written request to be notified, and a "notice of filing application" must be posted at the site. Where nearby property owners number greater than 1,000, an alternative display advertisement can instead be placed in a local newspaper.

Additional noticing procedures apply for projects that require a Coastal Development Permit (§ 30.80.080) or involve a Local Coastal Program Amendment (LCPA) (§ 30.82.020). Specifically, notices for projects that require a CDP must state that the project is in the Coastal Zone, contains the project description, whether the local action is appealable to the Coastal Commission, and a description of how to file local and Coastal Commission appeals. For LCPAs, the zoning code requires that noticing be consistent with Sections 13516 and 13552 of the Commission's administrative regulations. These sections require that the local government establish procedures to provide "...maximum opportunities for participation of the public and all affected governmental agencies in the preparation of the LCP..." Specifically, notices are required for public review sessions, availability of review drafts, studies, or other relevant documents pertaining to the LCP and must be sent to members of the public who requested notice and predefined interested parties. Notice of availability of review drafts of LCP materials must be made available a minimum of six weeks prior to final action on an item and notice of the local government hearing on an LCPA must be made a minimum of 10 days prior to the hearing.

If the only notice of the date and location of a subsequent or continued hearing is an oral announcement at a hearing, there is a risk that an interested party who left the first hearing early won't be made aware of subsequent hearings. However, pursuant to the local government open meeting law, the Brown Act, if the subsequent meeting is conducted more than five days after the original meeting, a new agenda will be prepared

and posted that includes the agenda item with a short description. In addition, the City's proposed amendment to Section 30.01.070 has been made to clarify existing City practice and does not conflict with the existing noticing requirements of the certified LCP. Furthermore, the proposed amendment is consistent with Section 13567 of the Commission's administrative regulations which states:

§ 13567. Notice of Local Government Action When Hearing Continued.

If a decision on a development permit is continued by the local government to a time which is neither (a) previously stated in the notice provided pursuant to Section [13565](#), nor (b) announced at the hearing as being continued to a time certain, the local government shall provide notice of the further hearings (or action on the proposed development) in the same manner, and within the same time limits as established in Section [13565](#).

As stated in the proposed amendment to § 30.01.070, additional notice of subsequent or continued hearings won't be made, "unless required by law..." As summarized above, the City's certified LCP contains detailed procedures related to noticing for projects that require a CDP and for LCPAs. These policy sections are not proposed to be amended and therefore the City's clarification to § 30.01.070 is not expected to result in adverse impacts to public participation related to CDPs or LCPAs.

The second revision that merits additional analysis is the addition of Section 30.72.020.C, which references Chapter 30.00 of the municipal code. The City is proposing new Section 30.72.020.C, which refers to the City procedures for initiating and granting zoning amendments, and it states:

C. A change in boundaries of any zone, a change of zoning on property from one zone to another, or a change in the zoning regulations that increases density or intensity of land use is subject to Chapter 30.00 Encinitas Right To Vote Amendment.

In the City of Encinitas, the entire zoning code is part of the IP, except for Chapter 30.00. Chapter 30.00 resulted from a Citizen's Initiative that passed in 2013 (Proposition A). Proposition A prescribed a maximum building height of 30 ft. and the method for measuring building height, a maximum of two stories for new development, modified noticing requirements, and a requirement for a citywide vote for any major amendments to the City's existing land use planning policy documents. At the time of the initiative's passage, even though Commission staff encouraged the City to reconcile the Proposition with the certified LCP, the City chose not to submit an LCPA to incorporate the provisions of the initiative into the certified LCP. Instead, the City and Commission staff agreed that any aspect of the new zoning chapter that was more protective of coastal resources could be applied consistently with the LCP, but that for any aspects that were less restrictive, the LCP would control.

The proposed reference to Chapter 30.00 would incorporate the entirety of the zoning chapter into the certified LCP by reference. Incorporation of the entire chapter into the LCP would be problematic as there are numerous aspects of Chapter 30.00 that are inconsistent with the existing LCP. For example, the existing LCP has various provisions that allow buildings higher than 30 ft. and more than two stories in different areas of the City. While incorporation of Chapter 30.00 into the LCP may ultimately be a positive development and result in reduced confusion for project applicants, adoption of this subsection without reconciliation of the height inconsistencies and the public vote provisions would be problematic. Therefore, the proposed LCP amendment cannot be found consistent with the certified LUP and Specific Plans.

**PART V. FINDINGS FOR APPROVAL OF THE CITY OF ENCINITAS
IMPLEMENTATION PROGRAM AMENDMENT, IF MODIFIED**

The proposed amendment is intended to improve regulatory consistency, provide clarity in the zoning code, improve the usability of the code, and correct minor errors, along with some other minor amendments. However, the proposed reference to Chapter 30.00, which is not currently part of the LCP, would result in various inconsistencies within the certified LCP. The Commission is therefore suggesting one modification, Suggested Modification No. 1, to the City's proposed amendment to eliminate Section 30.72.020.C.

As described herein, the City has not yet reconciled the differences between the adopted height limits in the certified land use and specific plans or the public vote requirement and the initiative to date. Rather than attempt to complete that work with this amendment, the City requested that the cross-reference/sub-section be deleted. The City may address the issues at a later date and the Commission concurs with this approach. If modified as suggested, the proposed Implementation Program amendment can be found to be consistent with and adequate to carry out the City's certified Land Use Plan and Specific Plans. Therefore, the Commission finds that, as modified, the proposed Implementation Program amendment can be supported.

**PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT (CEQA)**

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. In its action, the City found that the proposed amendments are exempt from environmental review pursuant to CEQA Guideline 15378(b)(5), which exempts organizational or administrative activities of governments that will not result in direct or

indirect physical changes in the environment. The proposed amendments herein are primarily procedural in nature and do not have a significant effect on the environment. The proposed inclusion of a cross-reference to Proposition A/Chapter 30.00 did raise building height conflicts, which may have resulted in view impacts or community character issues. However, as modified herein, the Commission finds there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact on the environment. Therefore, as modified, the Commission finds the subject LCP Implementation Program, as amended, conforms with CEQA provisions.

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